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No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1981

WESTERN CONFERENCE OF TEAMSTERS
PENSION TRUST FUND,
Petitioner,

VS.

FRANK MUSIC,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

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QUESTIONS PRESENTED FOR REVIEW

1. Is the court of appeals' determination that § 302(c)(5) of the Labor Management Relations Act grants jurisdiction to Federal courts to review the reasonableness of pension plan eligibility rules correct in view of this Court's determination in *United Mine Workers, etc.* v. *Robinson* (U.S.S.Ct. March 8, 1982) ..... U.S. ....., 50 U.S.Law Week 4288, that § 302(c)(5)'s "language hardly embodies this reasonableness requirement"?

2. Where a pension plan's eligibility rule is identical to the rule which Congress has established for eligibility for Social Security disability benefits may a court ignore Congress' judgment and hold that the rule is unreasonable as a matter of law?*

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*The parties to the proceeding in the Ninth Circuit are named in the title of this petition.

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OPINIONS BELOW

The opinion of the court of appeals is published in 660 F.2d 400. That opinion as amended is printed in Appendix A. The order denying rehearing en banc and amending the opinion is printed in Appendix B.

JURISDICTION

The opinion of the Court of Appeals for the Ninth Circuit was filed and entered on October 26, 1981, and its order denying rehearing was filed and entered on April 16, 1982. This Court has jurisdiction pursuant to § 1254(1) of Title 28 of the United States Code.

STATUTORY PROVISION INVOLVED

This case involves § 302 of the Labor Management Relations Act of 1947, 61 Stat. 157, as amended (29 U.S.C. § 186), the pertinent provisions of which are set forth in Appendix C.

STATEMENT OF THE CASE

Respondent was covered by the Western Conference of Teamsters Pension Plan, which at all times required as a condition for eligibility for disability benefits that the applicant "is receiving Disability Insurance Benefits under the Federal Social Security Act." The Federal disability insurance program requires a waiting period of five full consecutive calendar months between the date an applicant is injured and the applicant's "date of entitlement" upon which he is eligible to receive benefits.

Respondent suffered a heart attack and stopped working on November 6, 1975. In late August 1976, respondent received a "Social Security Award Certificate" that fixed his date of entitlement for disability insurance benefits at May 1, 1976—five months after his date of injury. On August 25, 1976, respondent applied for a disability benefit under the Plan. The Western Conference of Teamsters Pension Trust Fund determined that respondent first met the requirements for a disability retirement benefit, i.e., "is receiving Disability Insurance Benefits under the Federal Social Security Act," on May 1, 1976, and, therefore, the amount of his benefit was to be calculated under the Plan as in effect on that date.

Prior to January 1, 1976, the amount of a disability benefit was equal to an age 65 retirement pension. In July

1975, the trustees lowered the amount of disability benefits effective January 1, 1976, and made those benefits applicable to all persons who first became eligible for them on and after January 1, 1976. The effect of the change was to reduce the level of disability benefits to equal early retirement benefits subject to a floor of 55 per cent of full age 65 retirement benefits.

Respondent filed a complaint in the United States district court alleging that the trustees of the Trust, in refusing to award the larger benefits under the 1975 version of the Plan solely because he did not begin receiving the Disability Insurance Benefits from the Social Security Administration until May 1, 1976, violated their duties under § 302(c) of the Labor Management Relations Act of 1947.[1]

The parties entered into a stipulation agreeing to certain facts and filed cross-motions for summary judgment.

The trial court granted petitioner's motion for summary judgment and an appeal was taken. The Court of Appeals reversed, holding (1) that the district court had jurisdiction on the ground that a "structural defect" in violation of § 302 exists when an eligibility requirement is viewed by it as arbitrary, capricious and unreasonable and (2) that the Trust Fund had demonstrated no reasonable justification for the requirement that an employee must become eligible for Federal social security benefits in order to become eligible for disability pension benefits under the Plan, i.e., for the five-month waiting period (Appx. A).

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[1]Respondent also alleged violations of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001, et seq.) which were not reached by the court below (Appx. A, p. A-12).

REASONS FOR GRANTING CERTIORARI

The case presents an important question of Federal jurisdiction involving an interpretation of § 302 of the Labor Management Relations Act[1] that has been adopted by numerous courts of appeals, but which this Court expressly repudiated in *United Mine Workers, etc.* v. *Robinson* (U.S.S.Ct. March 8, 1982) ..... U.S. ....., 50 U.S.Law Week 4288. This Court should grant certiorari and make clear that § 302 does not give Federal courts jurisdiction to review eligibility requirements established by trustees solely on the ground that "unreasonable" requirements constitute "structural defects" under § 302.

At the very least, the Court should vacate and remand this case to the court below for reconsideration in view of this Court's decision in *United Mine Workers*.

I. THE DECISION BELOW EXPANDS FEDERAL JURISDICTION UNDER § 302(c)(5) IN DIRECT CONTRADICTION OF THIS COURT'S MANDATE.

In *United Mine Workers, etc.* v. *Robinson* (U.S.S.Ct. March 8, 1982) ..... U.S. ....., 50 U.S.Law Week 4288, this Court held that § 302(c)(5) of LMRA does not authorize Federal courts to review for reasonableness the eligibility rules established by a collective bargaining agreement. The bases for the decision, as articulated by the Court, were the following:

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[1]Section 302(e) provides, in relevant part:

"The district courts of the United States * * * shall have jurisdiction, for cause shown, * * * to restrain violations of this section [§ 302]" (Appx. C, p. A-17).

This is the sole basis for the exercise of jurisdiction by the courts below (Appx. A, pp. A-5 to A-6; see *Alvarez* v. *Erickson* (9 Cir. 1975) 514 F.2d 156, 164).

> *"The statutory language hardly embodies this reasonableness requirement.* Its plain meaning is simply that employer contributions to employee benefit trust funds must accrue to the benefit of employees and their families and dependents, to the exclusion of all others. Indeed, this has been this Court's consistent interpretation of § 302(c)(5)" (50 U.S.Law Week 4290; emphasis added);

and

> "All the conditions in the section fortify the basic requirement that employer contributions be administered for the sole and exclusive benefit of employees. *None of the conditions places any restriction on the allocation of the funds among the persons protected by § 302(c)(5)*" (50 U.S.Law Week 4290; emphasis added).

In the case at bar, the court of appeals held the district court had Federal jurisdiction under § 302(c)(5) to review the *allocation of the fund among the persons protected by § 302(c)(5)*. That holding is simply wrong in view of this Court's decision in *United Mine Workers*.

It makes no difference that the eligibility rules in this case were established by the Trustees rather than directly by the collective bargaining agreement. If § 302(c)(5) contains no "reasonableness requirement" and places no "restriction on the allocation of the funds among the persons protected by § 302(c)(5)," then *a fortiori* the Federal courts have no power *under that section* to pass upon the reasonableness of eligibility rules that allocate benefits among participants, regardless of whether the rules were established directly by the collective bargaining agreement

or by the trustees carrying out the terms of the collective bargaining agreement.

And it is likewise clear that the court below determined that the district court had jurisdiction *only* because it interpreted § 302(c)(5) as containing a reasonableness requirement:

> "Thus, under § 302(c)(5), a pension trust fund must be operated 'for the sole and exclusive benefit of the employees.' *Sailer v. Retirement Fund Trust*, 599 F.2d 913, 914 (9th Cir. 1979). Nevertheless, courts generally recognize that the trustees must have broad discretion in fashioning eligibility requirements for pensions, and that judicial intervention is appropriate only where the trustees' actions in fashioning or applying those eligibility requirements do not have a reasonable basis or are arbitrary and capricious. *See Ponce v. Construction Laborers Pension Trust*, 628 F.2d 537, 541-42 (9th Cir. 1980); *Sailer v. Retirement Fund Trust*, 599 F.2d at 914. On the other hand, if an employee is 'arbitrarily and capriciously' denied a pension, either because the eligibility requirements themselves are unreasonable or because reasonable eligibility requirements are applied in an unreasonable manner, a 'structural defect' exists in the pension plan, in violation of § 302" (Appx. A, pp. A-5 to A-6).

The basic error of the court below and numerous other courts' is the engrafting onto § 302(c)(5) of a purpose it

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'The importance of the issue involved here is emphasized by the number of appellate courts that have erroneously relied on the "structural defect" theory to give jurisdiction to review trustees' actions for reasonableness. See, e.g., *Stacey* v. *Combs* (*D.C.Cir.* 1982) 671 F.2d 602, 604; *Valle* v. *Joint Plumbing Industry Bd.* (2 Cir. 1980) 623 F.2d 198, 201, n. 8; *Knauss* v. *Gorman* (3 Cir. 1978)

was never intended to have. As this Court made clear in *United Mine Workers*, the requirements imposed by § 302 (c)(5) were intended to serve one purpose only:

> "The section was meant to protect employees from the risk that funds contributed by their employers for the benefit of the employees and their families might be diverted to other union purposes or even to the private benefit of faithless union leaders. Proponents of this section were concerned that pension funds administered entirely by union leadership might serve as 'war chests' to support union programs or political factions, or might become vehicles through which 'racketeers' accepted bribes or extorted money from employers.
>
> "Our interpretation of the purpose of the 'sole and exclusive benefit' requirement is reinforced by the other requirements of § 302(c)(5). Section 302(c)(5) is an exception in a criminal statute that broadly prohibits employers from making direct or indirect payments to unions or union officials. Each of the specific conditions that must be satisfied to exempt employer contributions to pension funds from the criminal

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583 F.2d 82, 85-86; *Seafarers Pension Plan* v. *Sturgis* (4 Cir. 1980) 630 F.2d 218, 221-223; *Local Union No. 5, Etc.* v. *Mahoning & Trumbull, Etc.* (6 Cir. 1976) 541 F.2d 636, 638-639; *Johnson* v. *Botica* (7 Cir. 1976) 537 F.2d 930, 933-934; *Phillips* v. *Kennedy* (8 Cir. 1976) 542 F.2d 52, 54; *Ponce* v. *Const. Laborers Pension Trust* (9 Cir. 1980) 628 F.2d 537, 541-542; *Mestas* v. *Huge* (10 Cir. 1978) 585 F.2d 450, 453.

A further ground for review by the Court is provided by the fact that the above-cited cases conflict with the decisions in the First Circuit which hold that § 302 does not give Federal courts jurisdiction to review trustees' actions for violations of fiduciary obligations or standards of prudence in the administration of trust funds (*Bowers* v. *Ulpiano Cassi, Inc.* (1 Cir. 1968) 393 F.2d 421, 424-426; *Bowers* v. *Moreno* (1 Cir. 1975) 520 F.2d 843, 845-846).

> sanction is consistent with the nondiversion purpose. * * * All the conditions in the section fortify the basic requirement that employer contributions be administered for the sole and exclusive benefit of employees. None of the conditions places any restriction on the allocation of the funds among the persons protected by § 302(c)(5)" (50 U.S.Law Week 4290).

Therefore, an eligibility rule which does not divert funds does not constitute a "structural defect" within the context of § 302(c)(5) and may not be reviewed under that section regardless of its reasonableness or unreasonableness.

For this reason, the Court's footnote in *United Mine Workers* that:

> "In *NLRB* v. *Amax Coal Co.*, ___ U.S. ___, ___, the Court held that in enacting § 302(c)(5) 'Congress intended to impose on trustees traditional fiduciary duties.' The Court did not decide, nor do we decide today, whether federal courts sitting as courts of equity are authorized to enforce those duties" (50 U.S.Law Week 4291)

does not at all suggest a reason for refusing to grant a writ of certiorari. The decision below was not based on some alleged violation of traditional fiduciary duties, but on the ground that the "sole and exclusive benefit" requirement allows review for reasonableness. In fact, in *Alvares* v. *Erickson* (9 Cir. 1975) 514 F.2d 156, the case in which the court below first adopted the "structural defect" theory as a basis for Federal jurisdiction to review eligibility rules for reasonableness, the court stated its erroneous reasoning as follows:

"We do believe, however, that a trust fund which authorizes the trustees to act arbitrarily and capriciously to exclude from eligibility certain potential employee-beneficiaries, has a structural defect in that it fails to satisfy the requirement that the fund shall be for the sole and exclusive benefit of all the employees. A Section 302 trust fund does not fit the categories of an ordinary trust and to that extent is *sui generis* and thus requires compliance with the objectives of Section 302. Roark v. Lewis [1968, 130 U.S. App. D.C. 360], 401 F.2d [425] at 427. *In assuming jurisdiction for the enforcement of such a trust in accordance with Section 302, we do not do so under any broad chancery powers of the Court (cf., e. g.,* Copra v. Suro, 236 F.2d 107 (1st Cir., 1956)), or under the theory that Section 302(e) is 'the foundation stone for federal court management of trust funds.' See Bowers v. Ulpiano Casal, Inc., 393 F.2d at 426. Rather, we believe that jurisdiction in a case of this kind can be found within the 'penumbra of express statutory mandate' of Section 302" (514 F.2d 166; emphasis added).

This is directly contrary to this Court's decision in *United Mine Workers.*

II. THE HOLDING OF THE COURT OF APPEALS, THAT A PENSION TRUST FUND HAS ACTED UNREASONABLY BY ADOPTING AN ELIGIBILITY RULE IDENTICAL TO THAT ESTABLISHED BY CONGRESS FOR SOCIAL SECURITY DISABILITY BENEFITS, CONFLICTS WITH ESTABLISHED PRINCIPLES APPLICABLE TO BENEFIT PLANS.

In any event, the opinion erroneously holds that eligibility and "vesting" must occur on the date of injury and that any other result would be arbitrary and unreasonable (Appx. A, pp. A-6 to A-12).

The court of appeals acknowledges that Social Security requires a five-month "waiting period" before the applicant can receive disability benefits, that an applicant is not "eligible" until this date of entitlement (Appx. A, p. A-2), and that the legislative history reflects reasons for this eligibility format, i.e., it assists in sorting permanent disabilities out from those that are only temporary (Appx. A, p. A-9). Nevertheless, the court of appeals held that the Trust Fund's format, which is precisely the same as the Federal Government's, is without rational justification.

The court of appeals was duty-bound to presume that the acts of Congress are rational and nonarbitrary (*Usery* v. *Turner Elkhorn Mining Co.* (1976) 428 U.S. 1, 15). Astonishingly, the court below holds that the trustees may not reach the same conclusion that Congress reached and that Congress imposed on all citizens as a matter of law. We are left in the curious position of a Federal format that is still presumptively rational, while the Trust Fund's identical format is held to be irrational.

When a pension plan adopts the scheme of Congress, and that scheme is presumptively rational in the absence of a successful constitutional challenge, a court must find the pension plan's format rational as a matter of law. Any other result would be a subversion of the judiciary's prohibition from second-guessing the wisdom of Congress (see *New Orleans* v. *Dukes* (1976) 427 U.S. 297, 303; *Kleppe* v. *New Mexico* (1976) 426 U.S. 529, 541, n. 10).

The error of the court of appeals' decision is further demonstrated by the fact that it exalts form over substance. When the trustees passed the disability reduction

rule on July 17, 1975, they could have made it effective immediately and applied it to all persons who first became ill or injured on July 18 or later. This would have been lawful under the opinion. Instead, the trustees delayed the effective date of the rule for five months, to January 1, 1976, and keyed it (as they always had) to the Social Security disability effective date, which similarly involves a five-month delay from the injury date. The effect of this action was precisely the same: i.e., to reduce benefits for persons becoming injured after July 17. This, the opinion holds, is unlawful, directly negating the lawful intent of the trustees, which was to make the rule effective as to persons becoming injured after it was passed. The result of the court of appeals' decision is to turn sound pension administration into a lawyer's game.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Appendix A

Frank Music,
Plaintiff-Appellant,

v.

Western Conference of Teamsters
Pension Trust Fund,
Defendant-Appellee.

No. 79-4251.

United States Court of Appeals,
Ninth Circuit.

(as amended April 16, 1982)

Appeal from the United States District Court for the Northern District of California.

Before Skopil, Alarcon and Boochever, Circuit Judges.

ALARCON, Circuit Judge:

Appellant Frank Music appeals from a grant of summary judgment in favor of the Western Conference of Teamsters Pension Trust Fund and the denial of his cross-motion for summary judgment. For the reasons stated below, we reverse the judgment of the district court.

FACTS

Frank Music (hereinafter "Music") was a participant in the Western Conference of Teamsters Pension Trust Fund (hereinafter "Trust Fund") for approximately 20 years before he suffered a disabling heart attack on November 6, 1975, at age 47.

Music thereafter applied for federal social security disability benefits (hereinafter "federal disability"). In August of 1976, the Social Security Administration declared Music permanently disabled and therefore eligible to receive those benefits. The federal disability insurance program requires a "waiting period" of five full, consecutive calendar months between the date an applicant first becomes disabled and the applicant's "date of entitlement", upon which he or she is eligible to receive benefits. 42 U.S.C. § 423(c)(2). Music was therefore declared eligible to receive federal disability benefits as of May 1, 1976, which was five full consecutive calendar months after his November heart attack. His federal disability benefits were paid retroactive to that date.

In August of 1976, Music submitted an application to the Trust Fund for disability retirement benefits [hereinafter "union disability pension."]. The Trust Fund determined that Music was eligible to receive a disability pension,[1] and went about computing the amount of his monthly benefit payments.

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[1]The Pension Plan of the Western Conference of Teamsters in effect on the date Music became disabled provided in relevant part:

ARTICLE VII—DISABILITY
RETIREMENT BENEFITS

Section 1—Conditions:

An Employee shall be eligible for a Disability Retirement Benefit, subject to the limitations of Section 6, if

(a) he has not reached his 65th birthday, or retired under Article III,

(b) he has had at least 15 years of Unbroken Service,

(c) he has been covered under the Plan for at least 2 years,

Both at the time of Music's application for benefits and at the time of his disabling heart attack, the Pension Plan of the Western Conference of Teamsters [hereinafter "pension plan"] required that a disabled employee be receiving *federal* disability benefits before she or he was eligible to receive a *union* disability pension.[2] Music was therefore not eligible to receive a union disability pension until May 1, 1976, the date on which he became eligible for federal disability benefits. The Trust Fund fixed the amount of his monthly disability benefits by the terms of the pension plan in force on May 1, 1976 (hereinafter "the 1976 plan"). The plan had gone into effect on January 1, 1976.

Music, however, contended that his pension eligibility should commence on the date he became disabled, in November of 1975, and that the amount of his monthly dis-

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(d) he is disabled and is receiving Disability Insurance Benefits under the Federal Social Security Act, and

(e) Employer Contributions have been made on his account for a total of at least 3,000 Covered Hours in the 16 calendar quarters immediately preceding the calendar quarter during which he first satisfies all of conditions (a), (b), (c), and (d) above.

At the time of his disabling heart attack, Music had satisfied all of the eligibility requirements for a disability retirement benefit other than the one requiring that he be receiving federal disability benefits.

[2]The Trust Fund, in its brief, has stated that this requirement actually means only that an applicant must be *eligible* to receive federal disability benefits, rather than actually be *receiving* them. *See generally Fase v. Seafarers Welfare & Pension Plan*, 432 F.Supp. 1037 (E.D.N.Y. 1977), *aff'd*, 589 F.2d 112 (2d Cir. 1978). We assume that by this concession the Trust Fund has modified this requirement of the pension plan.

ability benefits should be computed under the more generous terms of the pension plan in effect at that time (hereinafter "the 1975 plan").[3] The effect of the pension plan's five-month "waiting period" eligibility requirement, and thus the question of which benefits Music is entitled to, are the sole issues in this case.[4]

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[3]Under the terms of the 1975 plan, a plan participant qualifying for a disability pension was entitled to monthly disability payments "equal to that . . . which the employee would have received . . . if the employee had retired at age 65." [Stipulation as to Agreed Upon Statement of Facts 4]. Under this formula, Music would have been entitled to disability retirement benefits of $533.50 per month. On July 17, 1975, however, the trustees of the Trust Fund voted to actuarily reduce the disability retirement benefits. The amendment effectuating this reduction was approved by the trustees in its final form on October 16, 1975, and its effective date was January 1, 1976. Under the modification adopted by the trustees, disability retirement benefits were made equivalent to "early retirement" benefit payments for disabled participants who are over age 55 on the effective date of their disability retirement benefits. Participants like Music who were under age 55 on the effective date of their disability retirement benefits receive 55 percent of their normal age 65 retirement benefit. Under this plan, Music's full retirement benefit of $533.50 was actuarily reduced to $317.50.

It should be noted here that Music does not allege that he had inadequate notice of the trustees' action lowering benefit amounts, nor does he claim that the trustees' decision to reduce the amounts of disability benefits was arbitrary or unreasonable.

[4]Neither the 1975 plan nor the 1976 plan specifically requires that an applicant wait five months for a union disability pension. The five-month waiting period is a specific eligibility requirement only for federal disability benefits. Nevertheless, because an applicant must qualify for federal disability benefits in order to qualify for a union disability pension, the five-month waiting period is *de facto* an eligibility requirement for a union disability pension, and will be treated as such in this opinion.

DISCUSSION

Jurisdiction and Standard of Review

Section 302 of the Taft-Hartley Act [29 U.S.C. § 186] contains a general prohibition against employers making payments of money "or other things of value" to union representatives. Section 302(c)(5), however, sets forth an exception to this general prohibition for payments made to an employee welfare or pension fund. Under § 302(c)(5), the general prohibition of § 302 does not apply "with respect to money or other things of value paid to a trust fund established . . . *for the sole and exclusive benefit of the employees of such employer*, and their families and dependents . . . ." § 302(c)(5) [emphasis added]. Thus, under § 302(c)(5), a pension trust fund must be operated "for the sole and exclusive benefit of the employees." *Sailer v. Retirement Fund Trust*, 599 F.2d 913, 914 (9th Cir. 1979). Nevertheless, courts generally recognize that the trustees must have broad discretion in fashioning eligibility requirements for pensions, and that judicial intervention is appropriate only where the trustees' actions in fashioning or applying those eligibility requirements do not have a reasonable basis or are arbitrary and capricious. *See Ponce v. Construction Laborers Pension Trust*, 628 F.2d 537, 541-42 (9th Cir. 1980); *Sailer v. Retirement Fund Trust*, 599 F.2d at 914. On the other hand, if an employee is "arbitrarily and capriciously" denied a pension, either because the eligibility requirements themselves are unreasonable or because reasonable eligibility requirements are applied in an unreasonable manner, a "structural de-

fect" exists in the pension plan, in violation of § 302.[5] *See Wilson v. Board of Trustees*, 564 F.2d 1299, 1300 (9th Cir. 1977); *Lee v. Nesbitt*, 453 F.2d 1309, 1311 (9th Cir. 1971); *Souza v. Trustees of Western Conference of Teamsters*, 460 F.Supp. 843 (N.D.Cal. 1978).

THE REASONABLENESS OF THE "WAITING PERIOD" REQUIREMENT

The five-month delay which is the basis of Music's complaint results directly from the pension plan's requirement that an employee be eligible for federal disability benefits in order to qualify for a union disability pension. Similar provisions have been the subject of litigation in this Circuit before.[6] The issue framed by Music here, however, is a

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[5] In the typical case, the challenged eligibility requirement operates to deny the employee a pension altogether. *See, e. g., Ponce v. Const. Laborers Pension Trust*, 628 F.2d 537 (9th Cir. 1980); *Sailer v. Retirement Fund Trust*, 599 F.2d 913 (9th Cir. 1979); *Wilson v. Board of Trustees*, 564 F.2d 1299 (9th Cir. 1977), *Giler v. Board of Trustees*, 509 F.2d 848 (9th Cir. 1975). In the instant case, the eligibility requirement challenged by Music operated only to *reduce* the amount of his pension, but does not make him ineligible for a pension. Neither Music nor the Trust Fund suggests, however, that Music's claim does not involve an alleged "structural" deficiency in the pension plan.

[6] *See Burroughs v. Bd. of Trustees*, 398 F.Supp. 168 (N.D.Cal. 1975), *aff'd*, 542 F.2d 1128 (9th Cir.), *cert. denied*, 429 U.S. 1096, 97 S.Ct. 1113, 51 L.Ed.2d 543 (1977); *Nudo v. Western Conference of Teamsters*, No. S-77-365 (E.D. Cal. Nov. 13, 1978), CCH Pension Plan Guide Transfer Binder, April, 1975–April, 1979 ¶ 22,587 (1979). *See also Blazquez v. New York City District Council*, 483 F.Supp. 727 (S.D.N.Y. 1979); *Fase v. Seafarers Welfare & Pension Plan*, 432 F.Supp. 1037, (E.D.N.Y. 1977), *aff'd*, 589 F.2d 112 (2d Cir. 1978).

relatively narrow one.[7] Music's sole contention is that his eligibility for a union disability pension should commence on the date he suffered his disabling injury, not five months later. In addition, according to Music, the benefit amount to which he is entitled should be computed under the terms of the pension plan in effect on the date he suffered his disabling injury, not under the terms of the pension plan in effect on the date he qualified for federal disability benefits five months later.

[1] The burden is initially on the plaintiff to show that the eligibility requirement under consideration is unreasonable or is "arbitrary and capricious." Once that showing is made, however, the burden shifts to the trustees of the Trust Fund to come forward with evidence establishing the reasonableness of the eligibility requirement, based on the purposes of the fund. *Roark v. Lewis*, 401 F.2d 425, 428 (D.C.Cir. 1968).

[2] The Trust Fund concedes that "[t]he only date that is important for Plan eligibility purposes is the effective date of qualification for Social Security benefits; the date that applicant suffered his heart attack has no significance under the Plan's eligibility scheme." In our view, Music has carried his initial burden of demonstrating that this is arbitrary and capricious.

One of the major purposes of the disability retirement pension, as evidenced by the terms of the pension plan, is

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[7] Music does not argue, for example, that requiring an applicant to qualify for federal disability benefits in order to qualify for a union disability pension is itself arbitrary and capricious on its face. Nor does he challenge the pension plan's right to rely on federal disability's medical determination of permanent disability.

to provide financial benefits for permanently disabled, long term employees who are not yet eligible for other pension benefits, and on whose behalf substantial contributions have been made to the Trust Fund. Each of the other eligibility requirements for a disability pension in both the 1975 and 1976 plans[4] is specifically related to that purpose. The five-month waiting period, by contrast, bears no apparent rational relationship to that purpose. It is difficult to see, at least *prima facie*, how delaying the *eligibility* of a permanently disabled applicant who satisfies every other eligibility requirement serves any of the purposes of the disability pension set forth above. In our view, where a plan participant satisfies the other eligibility requirements for a disability pension, including the age, length of service, and employer contribution requirements, that participant has a right to receive a disability pension which vests immediately when that participant becomes permanently dis-

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[4]The 1976 Plan provides in relevant part:

ARTICLE VI—DISABILITY RETIREMENT BENEFITS

Section 1—Conditions:

A Vested Participant or Age Pensioner shall be eligible for a Disability Retirement Benefit, subject to the limitations of Section 3, if (a) he has not reached his 65th birthday, (b) he is receiving Disability Insurance Benefits under the Federal Social Security Act, and

(c) he has been credited with a total of at least 3,000 Covered Hours in the calendar year in which he first satisfies all of the conditions above and in the four preceding calendar years.

The term "covered hour" means an hour of employment of an employee for which an employer contribution is paid on his account into the trust fund. See 1976 Plan, Art. I, Sec. 12.

The relevant terms of the 1975 plan are set forth in note 1, *supra*.

abled. It may be that *commencement of the benefits* to which a disabled participant has earned the right can reasonably be delayed for five months after the date of the disabling injury. Nevertheless, it is the occurrence of the disabling injury which ultimately and fundamentally establishes the participant's right to the disability benefits which are ultimately paid. *Prima facie*, it seems unreasonable to fix inception of a participant's right to benefits on any date other than the one on which the final event ultimately providing the grounds for a successful claim for benefits has occurred.

The Trust Fund offers three arguments in support of delaying an applicant's eligibility until the five-month waiting period has passed. First, it argues that a five-month waiting period is necessary to confirm that the disability under consideration is permanent. The waiting period thus performs an evidentiary role in the determination of disability—it assists in sorting permanent disabilities out from those which are only temporary.[9]

This argument is not persuasive. The Trust Fund offers no reasons for transforming a waiting period which serves an evidentiary function into an eligibility requirement. Music does not deny that it may be sound medical practice to delay the final determination of permanent disability for some reasonable period after the injury occurs. He argues, rather, that an applicant's eligibility should be retroactive to the date of the disabling injury, *the permanence of which*

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[9]This is the rationale put forward in the legislative history of that provision in the Social Security Act. *See* H.Rep. No. 1189, 84th Cong. 1st Sess. 6 (1955).

is merely confirmed by the waiting period.[10] The Trust Fund's argument does not address that issue.

Secondly, the Trust Fund claims that the Trust Fund would incur increased administrative costs if the Trust Fund were not permitted to rely on the five-month waiting period. We are told that the Trust Fund, for example, would be forced to conduct its own investigation into when a worker became injured, into whether subsequent events caused the disability, and into "other matters pertinent to a determination of when the applicant became 'disabled' . . . ." This argument is not convincing. The Trust Fund is *presently* presupposing that the injury occurring five months earlier, not some later one, caused the disability. As conceded by appellee in its first argument, *supra*, the Trust Fund *presently* relies on the five-month waiting period to confirm the permanence of that earlier injury. As noted above, Music concedes that the pension plan can delay determination of the employee's eligibility while the medical determination of the injury's permanence is being made, but insists that eligibility should be retroactive to the date the disabling injury occurred once that determination has been made. The Trust Fund had not explained how making eligibility retroactive to the date the disabling injury occurred would impose any additional administrative burden on them.

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[10] For purposes of this appeal, we assume that the "date of the disabling injury" is that used by the Social Security Administration in determining an applicant's "date of entitlement." The "date of entitlement," as noted earlier, is fixed after five consecutive calendar months "throughout which the individual . . . has been under a disability. . . ." 42 U.S.C. § 423(c)(2)(A).

Finally, the Trust Fund argues that the plan's reliance on the five-month waiting period "recognizes that most individuals receive temporary disability payments from their health and welfare plans or other insurance during this five-month interim." While the thrust of this argument is not completely clear, the Trust Fund is perhaps contending that delaying payment of disability pension benefits is reasonable because it would enhance the actuarial soundness of the pension plan.[11] The Trust Fund might further suggest that such a policy is not at odds with the purpose of the pension plan, since affected workers receive income from other sources during that period.

We do not find this argument persuasive. Music is not arguing that he is entitled to disability benefits for the five-month period immediately following his disabling injury; indeed, Music's counsel made quite clear at oral argument that Music is not seeking any benefits for that five-month period.[12] Music is arguing only that his *eligibility* for benefits should be fixed as of the date of his disabling injury *for purposes of determining whether* he is covered under the 1975 plan or under the 1976 plan. The Trust Fund's argument does not address that issue.

The Trust Fund has demonstrated no reasonable justification for delaying Music's eligibility for a disability

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[11] *See generally, Tomlin* v. *Board of Trustees*, 586 F.2d 148 (9th Cir. 1978); *Wilson* v. *Board of Trustees*, 564 F.2d 1269 (9th Cir. 1977).

[12] Thus, the issue of whether the Trust Fund might reasonably delay commencement of benefits for 5 months, or might offset the union disability benefits for those five months by the amount of other benefits received from other sources, is not before us.

pension for five months after the date of his disabling injury. Music should therefore be deemed eligible for his pension as of November 5, 1975 and his benefits computed under the rate fixed by the 1975 plan.[13]

The judgment in favor of the Western Conference of Teamsters Pension Trust Fund is reversed. The order denying Music's cross-motion for a summary judgment is vacated. This matter is remanded to the district court for further proceedings consistent with the views expressed in this opinion.

REVERSED.

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[13]Because we find that the eligibility requirement here is arbitrary & capricious under § 302(c)(5), we need not address Music's contentions involving the Employee Retirement Income Security Act (ERISA), 29 U.S.C. 1001 et seq. (1974).

We are mindful of the fact that under the 1976 plan, disability benefits payable to plan participants who are 55 or over on the "effective date of their disability retirement benefits" are payable at a somewhat higher rate than similar benefits for participants who are under age 55 on the "effective date of their disability retirement benefits." 1976 Plan, Art. VI, § 2. The question may arise as to whether the "effective date of disability retirement benefits" for purposes of this provision should be considered the *actual* date of the disabling injury, as in this case, or the effective date of the *actual payments*, which under the 1976 plan is some five months later. That particular issue was not presented by this case, and we do not address it here.

Appendix B

United States Court of Appeals
For the Ninth Circuit

No. 79-4251
D.C. No. 78-1648 RHS

Frank Music,
Plaintiff-Appellant,

v.

Western Conference of Teamsters Pension Trust Fund,
Defendant-Appellee.

[Filed April 16, 1982]

ORDER

Appeal from the United States District Court
for the Northern District of California
Robert H. Schnacke, District Judge, Presiding
Argued and submitted January 15, 1981

Before: SKOPIL, ALARCON, and BOOCHEVER,
Circuit Judges.

The Opinion filed on October 26, 1981, in the above-entitled case has been amended as follows:

Add the following paragraph just prior to "REVERSED" IN No. 79-4251, Slip op. at 5432 (9th Cir. Oct. 26, 1981):

> "The judgment in favor of the Western Conference of Teamsters Pension Trust Fund is reversed. The order denying Musick's cross-motion for summary judgment is vacated. This matter is remanded to the district court for further proceedings consistent with the views expressed in this opinion."

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

Appendix C

Section 302 of the Labor Management Relations Act of 1947, 61 Stat. 157, as amended (73 Stat. 537, 87 Stat. 314), 29 U.S.C. § 186, provides in pertinent part:

"(a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value—

"(1) to any representative of any of his employees who are employed in an industry affecting commerce;

* * * * *

"(b)(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) of this section.

"(c) The provisions of this section shall not be applicable * * * (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from

principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon * * * and [the agreement] shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; * * *

"(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

"(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 381 of Title 28 (relating to notice to opposite party) to restrain violations of this section, without regard to the provisions of section 17 of Title 15 and section 52 of this title, and the provisions of sections 101-115 of this title."

Office - Supreme Court, U.S.
FILED
JUL 13 1962
ALEXANDER L. STEVAS,
CLERK

No. 81-2282

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1961

WESTERN CONFERENCE OF TEAMSTERS
PENSION TRUST FUND,
Petitioner,

vs.

FRANK MUMM,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

[redacted]

QUESTIONS PRESENTED

1. Do the federal courts have jurisdiction to review the reasonableness of pension plan eligibility rules of a jointly administered labor-management trust fund created pursuant to Section 302(c)(5) of the Labor Management Relations Act?

2. Where a pension plan's eligibility rule is identical to the rule which Congress has established for eligibility for Social Security disability benefits, may a court hold that the rule is unreasonable as a matter of law?

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No. 81-2283

IN THE SUPREME COURT

of the

UNITED STATES

October Term, 1981

WESTERN CONFERENCE OF TEAMSTERS
PENSION TRUST FUND,
Petitioner,
vs.
FRANK MUSIC,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Respondent Frank Music respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on October 26, 1981, and amended on April 16, 1982.

STATUTORY PROVISIONS INVOLVED

This case involves Section 302 of the Labor Management Relations Act of 1947, 61 Stat. 157, as amended (29 U.S.C. Section 186) and Sections 403, 404, 502 and 514 of the Employee Retirement Income Security Act of 1974, 88 Stat. 876, 877, 891, 897 (29 U.S.C. Sections 1103, 1104, 1132 and 1144), the pertinent provisions of which are set forth in Appendix A.

STATEMENT OF THE CASE

Respondent Frank Music, a twenty year participant in the Western Conference of Teamsters Pension Plan when he

suffered a disabling heart attack on November 6, 1975, complained that he was entitled to have his eligibility for disability benefits fixed as of the date of his disabling injury. On the date of his heart attack, Music satisfied all of the age, length of service and employer contribution requirements for a disability retirement benefit under the Plan. He asked the United States District Court to determine that he was entitled to have his benefit computed according to the Plan formula in effect on that date, which would have provided an amount equal to an age 65 retirement pension.

Petitioner Western Conference of Teamsters Pension Trust Fund contended that Music first became eligible for a disability retirement benefit on May 1, 1976, under a further requirement of the Plan that a participant "is receiving

Disability Insurance Benefits under the Federal Social Security Act." The Social Security Act required a waiting period of five full consecutive calendar months between the date an applicant was injured and commencement of Disability Insurance Benefits. The Trust Fund claimed that because of this waiting period requirement, Music was not yet eligible to receive a disability retirement benefit on January 1, 1976, when a Plan amendment reducing the level of disability retirement benefits was put into effect. Because of his age, 47, the amended Plan reduced Music's benefit to 55 percent of the age 65 retirement pension.

Music filed a complaint in the district court claiming jurisdiction under Section 302(e) of the Labor Management Relations Act of 1947, as an action to restrain violations of Section 302, and

under Section 502(e)(1) of the Employee Retirement Income Security Act of 1974, as an action brought by a participant to recover benefits due to him under the terms of his Plan, to enforce his rights under the terms of the Plan, to clarify his rights to future benefits under the terms of the Plan, and to enjoin acts and practices which violate the provisions of Title I of ERISA.[1/] Specifically, Music alleged that by refusing to award the larger benefit based upon the 1975 Plan, though his disability commenced and he was otherwise qualified in 1975, solely because he did not complete the waiting period until May 1976, the Trust Fund's trustees acted arbitrarily, capriciously and with disregard of their

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1/ Respondent alleged other grounds for jurisdiction which are not pertinent to this petition.

fiduciary duties, in violation of Sections 302(c) of the LMRA and Section 403(c)(1) of ERISA.

Cross motions for summary judgment were filed upon a stipulated statement of facts, and judgment was entered without opinion in favor of the Trust Fund. Music appealed successfully to the Ninth Circuit, which reversed on the grounds that delaying eligibility to completion of the five-month waiting period "bears no apparent rational relationship" to the purpose of providing financial benefits for permanently disabled employees. Petitioner's Appendix A, p. 8.

Section 302 prohibits payment of money by employers to an employee benefit trust fund on which union representatives serve as trustees, unless the trust is established "for the sole and exclusive benefit of the employee of such employer, and their families and

dependents." Section 302(c)(5). The Ninth Circuit said that trusts having eligibility requirements which do not have a reasonable basis or are arbitrary and capricious, or which are applied in an unreasonable manner, violate the requirement. Petitioner's Appendix A, p. 5.

The Ninth Circuit concluded that the Trust Fund might delay the final determination of eligibility until permanence could be confirmed by the waiting period, but that "it is the occurrence of the disabling injury which ultimately and fundamentally establishes the participant's right to the disability benefits which are ultimately paid." Petitioner's Appendix A, p. 9. Having decided the case under Section 302, the Court of Appeals found it unnecessary to reach Music's arguments under ERISA. Petitioner's Appendix A, pp. 5-6, 12, fn. 13.

REASONS FOR DENYING THE WRIT

Nine federal circuit courts of appeals, as listed in footnote 3 of the Petition, permit federal court review under Section 302 of acts of trustees alleged to be unreasonable. No circuit has expressly held otherwise. The issue was explicitly reserved in United Mine Workers, etc. v. Robinson (U.S. Supreme Ct. March 8, 1982) ___ U.S. ___, 50 U.S.L.Week 4288. A contrary ruling in this case would not alter the ultimate outcome, however, because the events of which respondent complained all occurred after the effective date of Sections 403, 404, 502 and 514 of the Employee Retirement Income Security Act of 1974, which conferred upon the federal courts exclusive jurisdiction to review complaints that employee benefit plan trustees breached their fiduciary duties.

NO FEDERAL APPELLATE COURT HAS FOUND A CONFLICT WITH THE RULE OF DECISION EXPRESSED BELOW

No conflict exists between the Ninth Circuit's decision in this action and this Court's recent opinion in United Mine Workers, etc. v. Robinson (U.S. Supreme Ct. March 8, 1982) ___U.S.___, 50 U.S.L. Week 4288. United Mine Workers concerns a challenge to eligibility rules established by the collective bargaining parties in a labor agreement. This Court held that Section 302(c)(5) of the LMRA imposed no reasonableness requirement on collective bargaining parties who adjusted benefit eligibility rules to gain a strike settlement. Rather than overruling the line of circuit court decisions permitting review of trustee action under the "arbitrary and capricious" standard, among which it cited Pete v. United Mine Workers of America Welfare & Retirement

Fund of 1950 (D.C.Cir. 1975) 517 F.2d 1275 (en banc) and Kosty v. Lewis (D.C. Cir. 1963) 319 F.2d 744, cert.den. 375 U.S. 964, this Court found that the discretion to determine eligibility requirements and benefit levels had not been delegated to the trustees. 50 U.S. L.Week at 4291.

The Court then reserved the question petitioner now seeks to raise in this case:

> "In NLRB v. Amax Coal Co., 453 U.S. 322, the Court held that in enacting § 302(c)(5) 'Congress intended to impose on trustees traditional fiduciary duties.' The Court did not decide, nor do we decide today, whether federal courts sitting as courts of equity are authorized to enforce those duties. It is, of course, clear that compliance with the specific standards of § 302(c)(5) in the administration of welfare funds is enforceable in the federal district courts under

> § 302(e) of the LMRA. See Arroyo v. United States, 359 U.S. 419, 426-427." United Mine Workers, etc. v. Robinson, 50 U.S.L.Week at 4291, fn. 12.

Petitioner suggests that this Court should exercise its discretion in this case to resolve a conflict among the circuit courts. It refers to two decisions of the First Circuit that arose out of the same litigation over alleged diversion of trust assets from the ILA-PRSSA Welfare Fund. Petition, p. 6, fn. 3. One of them, Bowers v. Ulpiano Casal (1st Cir. 1968) 393 F.2d 421, came after dismissal of an action against six persons, none of them trustees, who allegedly accepted money out of trust. The Court stated that Section 302(e) gave the federal courts jurisdiction to restrain "violations of basic structure, as determined by the Congress, not violations of fiduciary

obligations or standards of prudence in the administration of the trust fund." Id. at 424. The Court went on to say that, "Such structural violations would consist of contributions to a trust fund which was not established for the sole and exclusive benefit of employees and dependents; which did not hold payments in trust to pay, from principal or income, for such employees' medical care, pensions, illness, etc.; which did not set forth in writing the detailed basis of payment; which did not have equal representation of employees and employers with provisions for a neutral person or umpire; which did not contain provisions for an annual audit; or which did not have a separate trust for pension and annuity funds." Id. at p. 4, fn. 4.

The First Circuit did not discuss or disapprove of then-existing circuit

court decisions from the District of Columbia holding that trust actions which are unreasonable, arbitrary and capricious are not taken for "the sole and exclusive benefit of employees and dependents" and violate Section 302. See Danti v. Lewis (D.C.Cir. 1962) 312 F.2d 345; Kosty v. Lewis (D.C.Cir. 1963) 319 F.2d 744. The Court did not mention or take a position on the "arbitrary and capricious" standard, and it might well have viewed diversion of funds as an issue within an area of day-to-date trust administration which Section 302 was not intended to regulate. The Ninth Circuit has said in Alvares v. Erickson (9th Cir. 1975) 524 F.2d 156, 165, that federal courts "have recognized a distinction between actions involving 'structural' deficiencies in the relevant trust which cause it to violate the 'sole and

exclusive benefit' provision of § 302 (c)(5) and actions involving only questions of day-to-day fiduciary administration of welfare and pension funds. Section 302(e), these cases say, provides jurisdiction over the former but not the latter."

Bowers v. Moreno (1st Cir. 1975) 520 F.2d 843, the second of these First Circuit decisions, concerned claims against plan trustees, among others, arising out of the same alleged diversion of assets. Again, the Court did not confront the principal authorities in other circuits, among them Alvares v. Erickson, issued five months earlier, or the series of decisions from the District of Columbia Circuit cited at footnote 1 of Pete v. United Mine Workers of America Welfare and Retirement Fund of 1950, supra, 517 F.2d at 1278, the latter issued six months

earlier. Nor did it discuss whether eligibility rules which were unreasonable, arbitrary and capricious would violate Section 302.

With the exception of the Circuit Court for the District of Columbia and the Ninth Circuit, most circuits which have considered the question have done so since 1975, when the second Bowers opinion was written. The broad acceptance of federal jurisdiction by other circuits since then, as listed in footnote 3 of the petition, leaves one to wonder whether the First Circuit would now deny jurisdiction on facts parallel to those presented here. There is certainly no clear statement in the First Circuit of a rule contrary to the one applied by the Ninth Circuit below.

Section 302 has been amended three times since the District of Columbia Circuit first reviewed trustee actions

for reasonableness in Danti v. Lewis and Kosty v. Lewis. See 83 Stat. 133 (1969); 87 Stat. 314 (1973); and 92 Stat. 2021 (1978). No revision has limited the authority of the federal courts to give equitable relief from violation of Section 302(c), yet it cannot be assumed that Congress was unaware of these interpretations. On the contrary, the 1974 enactment of ERISA made federal court supervision of employee benefit plan trustees exclusive, as discussed further in the following pages.

Certainly this matter should not be remanded to the Ninth Circuit for reconsideration in light of United Mine Workers v. Robinson, since this Court has already noted the limits of that ruling. And even if the Court were to conclude that the First Circuit cases have created a conflict among the

circuits, the writ should be denied, since the Trust Fund has not demonstrated that the outcome would be different if this case were decided according to ERISA standards. See Gordon v. ILWU-PMA Benefit Funds (9th Cir. 1980) 616 F.2d 433, 438.

FEDERAL COURTS HAVE JURISDICTION TO REMEDY TRUSTEE ACTS WHICH ARE UNREASONABLE, ARBITRARY AND CAPRICIOUS UNDER THE GENERAL FIDUCIARY STANDARDS OF ERISA

All of the pertinent events in this case occurred after January 1, 1975, when Congress gave the federal courts concurrent jurisdiction over actions by a plan participant or beneficiary "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan," and

exclusive jurisdiction over actions by a participant, beneficiary or fiduciary "(A) to enjoin any act or practice which violates any provision of this Title or the terms of the plan, or (B) or obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this Title or the terms of the plan." Section 502(a) of ERISA, 29 U.S.C. Section 1132(a). Section 502(e)(1) of ERISA provides:

> "Except for actions under subsection (a)(1)(B) [2/] of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this Title brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of the

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2/ Section 502 is set out at length in Appendix A.

> United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section."

With exceptions not bearing on this action, Section 514 of ERISA has removed the supervision of employee benefit trust funds from the states by providing that "provisions of this title [I] and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975." 3/

3/ Section 4 (29 U.S.C. § 1003) is set out at length in Appendix A. Section 4(a) describes employee benefit plans maintained by employers or employee organizations engaged in commerce or in an industry affecting commerce. Section 4(b) exempts government plans, (Cont.)

Part 4 of Title I of ERISA, commencing with Section 401 (29 U.S.C. § 1101) establishes rules of behavior for plan trustees in terms similar to the "sole and exclusive benefit" language of Section 302(c)(5). Section 403(c)(1) of ERISA [29 U.S.C. § 1103(c)(1)] states with limited exceptions that "the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and

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church plans and certain others. In the district court, the parties stipulated that "the Pension Plan and Trust constitute an 'employee pension benefit plan' within the meaning of section 3(2) of the Employee Retirement Income Security Act of 1974 ('ERISA') [29 U.S.C. § 1002(2)] and are subject to the provisions of Title I of ERISA."

their beneficiaries and defraying reasonable expenses of administering the plan." Section 404(a) [29 U.S.C. § 1104(a)] reiterates, "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . for the exclusive purpose of: (i) Providing benefits to participants and their beneficiaries; and (ii) Defraying reasonable expenses of administering the plan . . . ."

Federal courts which have found a reasonableness requirement implicit in the "sole and exclusive benefit" language of Section 302 should find authority in ERISA to remedy acts by trustees which are unreasonable, arbitrary and capricious. See Gordon v. ILWU-PMA Benefit Funds (9th Cir. 1980) 616 F.2d 433. With federal law now occupying the field, the federal courts may also assume traditional equity power. "[T]he same 'arbitrary

and capricious' standard of review governs judicial supervision of trustees, regardless of the origin of the fiduciary duties." Morgan v. Laborers Pension Fund (N.D.Cal. 1977) 433 F.Supp. 518, 524.

Because the circuit court found that the eligibility rules of petitioner were arbitrary and capricious, the outcome should be the same regardless of the source of jurisdiction. Since ultimate review by this Court would be unlikely to produce a different result on the merits, the writ should be denied.

PETITIONER MISREPRESENTS THE HOLDING OF THE NINTH CIRCUIT, WHICH PERMITTED THE USE OF A FIVE-MONTH WAITING PERIOD TO DETERMINE PERMANENCE OF DISABILITY BUT NOT AS A CONDITION OF ELIGIBILITY.

The Ninth Circuit did not hold, contrary to the suggestion made in the second question presented for review by

the Trust Fund, that it was unreasonable to require completion of the five-month waiting period of the Social Security Act (see 86 Stat. 1340, 1350, 1351, 42 U.S.C. § 423) before paying disability benefits. It said simply that while the Trust Fund might have the right to delay commencement for five months, a participant was entitled to have his right to benefits fixed as of the date of the disabling injury.

Three reasons were given by the Trust Fund for delaying eligibility until receipt of Social Security disability insurance benefits: That a five-month waiting period was necessary to confirm permanence of the disability; that it would be more expensive for the trust fund to make its own determination of disability; and that temporary disability benefits from health plans or other insurance was available to most

employees during the waiting period. In response to the first, the Ninth Circuit stated, "The Trust Fund offers no reasons for transforming a waiting period which serves an evidentiary function into an eligibility requirement." Petitioner's Appendix A, p. 9. Concerning the second, the court stated:

> "As noted above, Music concedes that the pension plan can delay determination of the employee's eligibility while the medical determination of the injury's permanence is being made, but insists that eligibility should be retroactive to the date the disabling injury occurred once the determination has been made. The Trust Fund had not explained how making eligibility retroactive to the date the disabling injury occurred would impose any additional administrative burden on them." Petitioner's Appendix A, p. 10.

As to the argument concerning alternative temporary benefits, the Ninth Circuit noted that respondent was not seeking benefits for the five-month period: "Music is arguing only that his eligibility for benefits should be fixed as of the date of his disabling injury for purposes of determining whether he is covered under the 1975 plan or under the 1976 plan. The Trust Fund's argument does not address that issue." Petitioner's Appendix A, p. 11. [Emphasis in original.]

Petitioner seems to suggest that the decision below raises a substantial constitutional issue concerning validity of the scheme established by Congress for payment of disability insurance benefits under the Social Security Act. Since this case does not concern a claim under the Social Security Act, it is hard to follow petitioner's point.

This Court has held that the benefit scheme of the Social Security system does not give rise to vested property interests as do rights founded in contracts, saying "It is apparent that the noncontractual interest of an employee covered by the Act cannot be soundly analogized to that of the holder of an annuity, whose right to benefits is bottomed on his contractual premium payments." Flemming v. Nestor (1960) 363 U.S. 603, 610. By contrast, with respect to private pensions, even those not based on collective bargaining agreements, many courts now hold to "the modern view that the promise of a pension constitutes an offer which, upon performance of the required service by the employee, becomes a binding obligation." Hoefel v. Atlas Tack Corporation (1st Cir. 1978) 581 F.2d 1, 4 and citations therein.

Respondent did not challenge the utility of a five-month waiting period to determine permanence of a disability, but only the plan's right to reduce his benefits after he met all of the age, length of service, and employer contribution requirements and then suffered a disabling injury. This case has not reached the question whether it is rational to delay commencement of benefits until completion of the waiting period, as expressly noted by the Ninth Circuit. Petitioner's Appendix A, p. 11. The issue is raised prematurely and the writ should be denied.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied. If the petition is granted,

the Court should consider whether review under Section 403, 404 and 502 of the Employee Retirement Income Security Act of 1974 would produce an identical result.

Dated: July 7, 1982.

Respectfully submitted,
MOORE, SIZOO & CANTWELL

Stephen McKae
Counsel of Record
On Behalf of the
Respondent Above named

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APPENDIX A

Section 302 of the Labor Management Relations Act of 1947, 61 Stat. 157, as amended (73 Stat. 537, 87 Stat. 314), 29 U.S.C. §186, provides in pertinent part:

"(a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend or deliver, any money or other thing of value---

"(1) to any representative of any of his employees who are employed in an industry affecting commerce;

* * * * *

"(b)(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or

accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) of this section.

"(c) The provisions of this section shall not be applicable * * * (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement

or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon * * * and [the agreement] shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other

places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; * * *

"(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

"(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 381 of Title 28

(relating to notice to opposite party) to restrain violations of this section, without regard to the provisions of section 17 of Title 15 and section 52 of this title, and the provisions of sections 101-115 of this title."

Section 4 of the Employee Retirement Income Security Act of 1974, 88 Stat. 839, 29 U.S.C. § 1003, provides in pertinent part:

"(a) Except as provided in subsection (b) and in sections 201, 301, and 401, this title shall apply to any employee benefit plan if it is established or maintained---

"(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

"(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting

commerce; or

"(3) by both.

"(b) The provisions of this title shall not apply to any employee benefit plan if---

"(1) such plan is a governmental plan (as defined in section 3(32));

"(2) such plan is a church plan (as defined in section 3(33)) with respect to which no election has been made under section 410(d) of the Internal Revenue Code of 1954;

"(3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

"(4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or

"(5) such plan is an excess benefit plan (as defined in section 3(36)) and is unfunded."

Section 403 of the Employee Retirement Income Security Act of 1974, 88 Stat. 876, as amended (94 Stat. 1296, 1299, 1308), 29 U.S.C. §1103, provides in pertinent part:

"(a) Except as provided in subsection (b), all assets of an employee benefit plan shall be held in trust by one or more trustees. Such trustee or trustees shall be either named in the trust instrument or in the plan instrument described in section 402(a) or appointed by a person who is a named fiduciary, and upon acceptance of being named or appointed, the trustee or trustees shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that---

"(1) the plan expressly provides that the trustee or trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to this Act, or

"(2) authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3).

"(b) The requirements of subsection (a) of this section shall not apply---

"(1) to any assets of a plan which consist of insurance contracts or policies issued by an insurance company qualified to do business in a State;

"(2) to any assets of such an insurance company or any assets of a plan which are held by such an insurance company;

"(3) to a plan---

"(i) some or all of the participants of which are employees of described in section 401(c)(1) of the Internal Revenue Code of 1954; or

"(ii) which consists of one or more individual retirement accounts described in section 408 of the Internal Revenue Code of 1954, to the extent that such plan's assets are held in one or more custodial accounts which qualify under section 401(f) or 408(h) of such Code, whichever is applicable;

"(4) to a plan which the Secretary exempts from the requirement of subsection (a) and which is not

subject to any of the following provisions of this Act:

"(A) part 2 of this subtitle,

"(B) part 3 of this subtitle, or

"(C) title IV of this Act; or

"(5) to a contract established and maintained under section 403(b) of the Internal Revenue Code of 1954 to the extent that the assets of the contract are held in one or more custodial accounts pursuant to section 403(b)(7) of such Code.

"(6) Any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a

former employer prior to the date such pension plan became subject to this Act.

"(c)(1) Except as provided in paragraph (2), (3) or (4) of subsection (d), or under section 4042 and 4044 (relating to termination of insured plans), the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan."

* * * * *

Section 404 of the Employee Retirement Income Security Act of 1974, 88 Stat. 877, as amended (94 Stat. 1296), 29 U.S.C. § 1104, provides in pertinent part:

"(a)(1) Subject to sections 403(c) and (d), 4042, and 4044, a fiduciary shall discharge his duties with

respect to a plan solely in the interest of the participants and beneficiaries and---

"(A) for the exclusive purpose of:

"(i) providing benefits to participants and their beneficiaries; and

"(ii) defraying reasonable expenses of administering the plan;

"(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

"(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

"(D) in accordance with the docu-

ments and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title or title IV."

* * * * *

Section 502 of the Employee Retirement Income Security Act of 1974, 88 Stat. 891, as amended (94 Stat. 1295), 29 U.S.C. § 1132, provides in pertinent part:

"(a) A civil action may be brought--

"(1) by a participant or beneficiary---

"(A) for the relief provided for in subsection (c) of this section, or

"(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

"(2) by the Secretary, or by a

participant, beneficiary or fiduciary for appropriate relief under section 409;

"(3) by a participant, beneficiary, or fiduciary, (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan;

"(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 105(c);

* * * * *

"(d)(1) An employee benefit plan may sue or be sued under this title as an entity. Service of summons, subpoena, or other legal process of a court upon a trustee or an adminis-

trator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

"(2) Any money judgment under this title against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this title.

"(e)(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this title brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

"(2) Where an action under this title is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

"(f) The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action."

* * * * *

Section 514 of the Employee Retirement Income Security Act of 1974, 88 Stat. 896, 29 U.S.C. § 1144, provides in pertinent part:

"(a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

"(b)(1) This section shall not

apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

"(2)(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking or securities.

"(B) Neither an employee benefit plan described in section 4(a), which is not exempt under section 4(b) (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking

for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

"(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 506 of this Act.

"(4) Subsection (a) shall not apply to any generally applicable criminal law of a state.

"(c) For purposes of this section:

"(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable to the District of Columbia shall be treated as a State law rather than a law of the

the United States.

"(2) The term "State includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title.

"(d) Nothing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 111 and 507(b)) or any rule or regulation issued under any such law."

No. 81-2283

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1981

WESTERN CONFERENCE OF TEAMSTERS
PENSION TRUST FUND,
Petitioner,

vs.

FRANK MUSIC,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITIONER'S REPLY BRIEF

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WESTERN CONFERENCE OF TEAMSTERS
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Respondent.

PETITIONER'S REPLY BRIEF

I. THE RULE OF DECISION BELOW CONFLICTS WITH THE DECISION OF THIS COURT IN UNITED MINE WORKERS v. ROBINSON.

Even if it were correct that the rule of the Ninth Circuit with respect to so-called "structural defects" is consistent with other circuit courts, it is expressly contrary to the interpretation of § 302 given by this Court in United Mine Workers, etc. v. Robinson (U.S.S.Ct.

March 8, 1982) ____ U.S. _____, 50 U.S.Law Week 4288.

Furthermore, there is simply no basis for the suggestion (Br. in Op., pp. 10-13) that the interpretation of that section by the Ninth Circuit and by the First Circuit are consistent.

II. THE RESULT BELOW WOULD NOT BE THE SAME IF ERISA PROVISIONS WERE APPLIED.

Respondent's Brief in Opposition is based largely on his contention that even if United Mine Workers now prohibits a "reasonableness" test for § 302, disability pension plans can still properly be tested for "reasonableness" under the general fiduciary duty provisions of § 404(a) of ERISA (Br. in Op., pp. 16-21). This contention is unsound for the following reasons:

Respondent finds support for his argument from the fact that the language of ERISA § 404(a) (29 U.S.C. § 1104(a)--

"solely in the interest of the participant"--closely resembles the "sole and exclusive benefit" language of § 302 (Br. in Op., p. 20). But this Court in United Mine Workers has interpreted the § 302 language not to include any reasonableness inquiry, and it follows that the ERISA § 404 language should be similarly construed. As this Court held all that this language means is that the Fund must benefit employees as opposed to outsiders. At most, respondent has raised the question whether Congress intended ERISA § 404 to have the same meaning as § 302, an issue hardly justifying the summary disposition respondent suggests.

In any event, respondent's contention that ERISA's fiduciary standards permit a reasonableness inquiry is wrong. In Fentron Industries v. Nat. Shopmen Pension Fund (9 Cir. 1982) 674 F.2d 1300, the Ninth Circuit found that no violation of ERISA § 404 was present simply because

the pension plan structurally violated ERISA's vesting rules. It held that "a trustee may be found to have violated his fiduciary duty only when his or her action was 'made in bad faith, or upon lack of a factual foundation, or when unsupported by substantial evidence'" (674 F.2d at 1307; citations omitted). The court went on to hold that the fiduciary standards under § 302 should be read similarly.

Far from endorsing a "reasonableness" test, Fentron holds that a structural violation will not automatically give rise to fiduciary liability under ERISA. The fiduciary liability provisions control bad faith actions by trustees, not the good faith enactment of eligibility rules that are subsequently determined to have been "structural defects." Fentron demonstrates that the court below would not reach the same result if it applied only the ERISA standards.

Indeed, it would be anomalous

for the ERISA standards to protect respondent's right to a disability benefit based on a "structural defect" theory when that benefit is not one protected by ERISA at all. ERISA's vesting rules apply only to "accrued benfits" (§ 203(a)),[1] which for a defined benefit plan such as this is "expressed in the form of an annual benefit commencing at normal retirement age" (§ 3(23)(A)).[2] A claim for an accrued

---

1 Section 203(a) provides in pertinent part:

> "Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and * * *
>
> * * * * *
>
> * * * if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions."

2 Section 3(23)(A) provides in pertinent part:

> "The term 'accrued benefit' means--
>
> "(A) in the case of a defined benefit plan, the individual's accrued benefit determined under the plan and * * * expressed in the form of an annual benefit commencing at normal retirement age."

benefit does not even become actionable until the participant reaches normal retirement age--age 65, in the case of this Plan (Hernandez v. Southern Nevada Culinary & Bartenders (9 Cir. 1981) 662 F.2d 617; Hurn v. Retirement Fund Trust of Plumbing, Etc. (9 Cir. 1981) 648 F.2d 1252). This case involves a disability benefit respondent began receiving at age 47 (Br. in Op., p. 3). Because ERISA was "never intended to impose upon a plan a requirement that any benefits be payable before age 65" (Hernandez, supra, 662 F.2d at 619), respondent's claim that the ERISA fiduciary provisions protect his right to a higher disability benefit is unsound.

III. RESPONDENT'S ARGUMENT WITH RESPECT TO THE FIVE-MONTH WAITING PERIOD CONSTITUTES A MERE PLAY ON WORDS.

Respondent's purported answer to petitioner's second point is no answer at

all. The point is not whether disability benefits are vested under the Social Security Act. Petitioner's point is that the Pension Plan tracks the format adopted by Congress, and that there is nothing unreasonable in following the Congressional model. Respondent had no vested right to a disability benefit when the Plan was amended, and the court below merely held (as we have shown on pages 10-11 of our Petition) that the trustees chose the wrong words in amending the Plan.

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